

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

PUBLIC EMPLOYMENT
RELATIONS BOARD

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LARRY FARRINGTON,
Appellant,

and

STATE OF IOWA (DEPARTMENT OF
CORRECTIONS),
Appellee.

CASE NO. 97-MA-0

ORDER

On September 16, 1996, a PERB administrative law judge issued a proposed decision and order which proposed that the State's motion to dismiss this purported state employee disciplinary action appeal be granted. The employee subsequently filed a notice of appeal from the ALJ's decision to the full PERB, which we will treat as a petition for review pursuant to PERB rule 621-11.8(19A, 20). The employee's petition contains an application for an evidentiary hearing as part of our consideration of the State's motion to dismiss. That application, which has been resisted by the State, is now before us.

The State's motion, in essence, challenges PERB's jurisdiction over the case, asserting that the employee's appeal is barred due to his failure to follow the disciplinary action appeal process set forth in Iowa Code section 19A.14(2) and the Iowa Department of Personnel's rules. According to the State, that procedure requires that an employee first appeal a disciplinary action to the IDOP director, and that the timely taking of such an appeal is a mandatory prerequisite to PERB's acquisition of jurisdiction.

The employee appears to acknowledge his failure to strictly follow the disciplinary appeal procedures established by the statute and rules, but seemingly resists dismissal of his PERB appeal on at least two grounds: That his noncompliance should be excused due to misrepresentations made by the State concerning his appeal rights which were contained in the written notice he received at the time the discipline was imposed, and that his substantial compliance with the prescribed procedure should be deemed sufficient.

At hearing on the State's motion the ALJ precluded the parties from presenting evidence, apparently believing that the presence or absence of PERB jurisdiction necessarily involved only a question of law and that the presentation of evidence was thus inappropriate. Under the circumstances here, we cannot agree.

As the State itself acknowledges in its resistance to the instant application, a party seeking to be excused from a timely filing requirement, as the employee here essentially does, must shoulder the burden of establishing not only the existence of a sound legal exception but also facts which support the application of that exception to the particular case. It seems axiomatic to us that if an employee is to be held to such a burden, he or she must at least be given an opportunity to satisfy it.

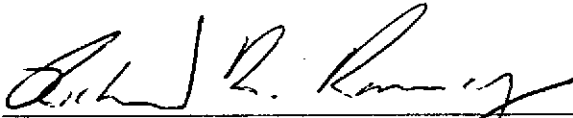
IT IS THEREFORE ORDERED that the employee's application for an evidentiary hearing concerning the State's motion is GRANTED.

Although empowered to remand this case to the ALJ for such further proceedings, we deem it appropriate that the Board conduct

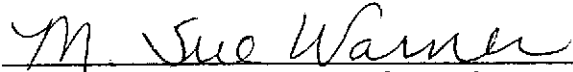
the limited hearing on this matter, at which we will receive evidence and arguments relating only to the motion to dismiss, and not the merits of the disciplinary action itself. The parties' representative shall be contacted by a representative of the Board for scheduling purposes as soon as is practicable.

DATED at Des Moines, Iowa this 1st day of November, 1996.

PUBLIC EMPLOYMENT RELATIONS BOARD



Richard R. Ramsey, Chairman



M. Sue Warner, Board Member